man, 37 Ont. L. Rep. 536; because of lack of definite beneficiaries, *Festorazzi* v. *St. Joseph's Catholic Church,* 104 Ala. 327; *Holland* v. *Alcock, supra* (prior to Tilden Act). But in England, the law has been settled by a long line of decisions that a bequest or devise for the saying of masses is void as a gift to superstitious uses. *Adams* v. *Lambert* (1602) 4 Co. Rep. 104b; *West* v. *Shuttleworth,* (1835) 2 My. & K. 684; *Heath* v. *Chapman,* (1856) 2 Drew 417; *In re Blundell's Trust,* (1861) 30 Beav. 360; *In re Fleetwood,* (1880) 15 Ch. D. 594; *In re Elliott,* (1891) 39 W. R. 297; *In re Egan,* [1918] 2 Ch. 350. In the principal case, the question came before the House of Lords for the first time, and in several elaborate opinions the English cases are reviewed, the court being of opinion that the whole doctrine was wrong *ab initio,* but that it had been perpetuated because it was considered poor policy to disturb it after such a long standing. Lord Wrenbury dissented in the principal case on that ground. The court emphasized the fact that the doctrine of the prior English decisions was not one of the common law and was not followed in any of the countries which had adopted the common law of England, citing (Ireland) *O'Hanlon* v. *Logue,* [1906] 1 I. R. 247, 269, 270; (Canada) *Elmsley* v. *Madden,* 18 Grant 386; (New Zealand) *Carrigan* v. *Redwood,* 30 N. Z. L. R. 244; (Australia) *Nelan* v. *Downes,* 23 C. L. R. 546; (United States) *In re Schouler,* 134 Mass. 426. The old English doctrine was originally enunciated on the basis of the preamble to statute 1 Edw. VI c. 14, vesting in the crown property appointed to superstitious uses. The instant case, and the recent decision of the House of Lords, *In re Bowman* [1917] A. C. 406, 16 MICH. L. REV. 149 (sustaining a trust to promote atheism), are a gratifying indication of a more tolerant attitude on the part of the English judiciary.

TELEGRAPHS—INTERSTATE COMMERCE—LIMITATION OF LIABILITY FOR NEGLIGENCE.—In an action for damages for delayed delivery of an unrepeated telegram between two points in Kansas, it appearing that the message was routed to a point in Missouri, which was the regular, usual, and customary route, and it appearing further that the message passed through its ultimate destination on its way to the relay point, it was *held* that this was an interstate transaction, and that a rule of defendant limiting its liability for negligence in delivery was valid. *Klippel* v. *W. U. Telegraph Co.,* (Kan., 1920) 186 Pac. 993.

In a much cited case it was ruled that a railroad corporation of a state is liable to taxation by such state upon its receipts for the proportion of the mileage within the state, for transportation by continuous intrastate carriage, but over a line which passed for a short distance into another state. *Lehigh Valley R. Co.* v. *Penna.,* 145 U. S. 192. Wholly misconceiving what that case really stood for, some state courts held, in reliance thereon, that, if the termini of a telegraph line were within one state, a message between them was intrastate, even though the line passed in part over the territory of another state. *Telegraph Co.* v. *Reynolds,* 100 Va. 459; *Railroad Commissioners* v. *Telegraph Co.,* 113 N. C. 213 (tariff regulation by state commis-

sion). But in the leading case of *Hanley* v. *Kansas City So. R. Co.*, 187 U. S. 617, the supposed doctrine of the *Lehigh Valley* decision was whittled down and held to be inapplicable to the fixing of railroad rates. The Virginia court, however, reaffirmed its previous holding (two judges dissenting) in *Telegraph Co.* v. *Hughes*, 104 Va. 240, decided after the *Hanley Case*. Thereafter, in 1910, Congress amended the Interstate Commerce Act of 1887 so as to place telegraph companies, with respect to interstate business, on the same footing with other common carriers. This resulted in some of the state tribunals righting themselves. *Telegraph Co.* v. *Bolling*, 120 Va. 413. Others, however, stood their ground. *Telegraph Co.* v. *Sharp*, 121 Ark. 135. In accord with the principal case is *Telegraph Co.* v. *Bowles*, (Va., 1919), 98 S. E. 645. See also *Telegraph Co.* v. *Lee*, 174 Ky. 210, Ann. Cas. 1918-C, 1026 and 1036, notes. In *Watson* v. *Telegraph Co.*, (N. C., 1919) 101 S. E. 81, it was held that a message like that in the case at bar was not interstate, where the mode of transmission was not the usual and customary one, but was adopted in order to evade state laws. While this may be a desirable result from the public's point of view as well as a curb on fraud, as a matter of logic it is difficult to see how an intangible mental state can change the nature of a cold fact. See the reasoning on this point in *Telegraph Co.* v. *Mahone*, 120 Va. 423. On the whole topic, see the notes in 28 L. R. A. (N.S.) 985 and in L. R. A. 1918-A 805.

TRESPASS—ASSAULT AND BATTERY—VIOLATION OF SUNDAY LAW—ABSOLUTE LIABILITY.—Plaintiff and defendant were hunting on Sunday in violation of the law. Defendant accidentally shot the plaintiff. *Held*: Defendant is liable in trespass, even in the absence of negligence. *White* v. *Levarn*, (Vt., 1920) 108 Atl. 564.

The fact that plaintiff was violating the Sunday law should not preclude recovery in an action on the case for negligence because the violation of the law was not the proximate cause of the injury. *Eagan* v. *Maguire*, 21 R. I. 189; *Taylor* v. *Star Coal Co.*, 110 Ia. 40; *Sutton* v. *Wauwatosa*, 29 Wis. 21. The breach of the law was a mere condition under which the accident happened, not the cause, *Dervin* v. *Frenier*, 91 Vt. 398. It was a mere violation of the plaintiff's collateral duty to the state. *City of Kansas City* v. *Orr*, 62 Kans. 61. See also *Cobb* v. *Cumberland County Power Co.*, 117 Me. 455. But some courts have held that where plaintiff was violating the law, he could not recover for injuries due to defendant's negligence. *Cratty* v. *City of Bangor*, 57 Me. 423; *Lyons* v. *Desotelle*, 124 Mass. 387; 6 CENTRAL LAW JOURNAL 402; 21 Id. 525; *Beachem* v. *Portsmouth Bridge*, 68 N. H. 382. This has been changed by statute in Maine and Massachusetts. Where both plaintiff and defendant were violating the Sunday law, it was held that their relative rights were not affected, and that plaintiff could recover in an action on the case, if defendant were negligent. *Gross* v. *Miller*, 93 Ia. 72; *Atlantic Steel Co.* v. *Hughes*, 136 Ga. 511. See COOLEY ON TORTS, [3rd edit.] p 273. All of the above cases were actions on the case where negligence is the gist of the action, but where plaintiff sues in trespass, as in the principal case, differ-